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Supreme Court, U.S.
FILED

961747 MAY 1 1997

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No.

In The
Supreme Court of the United States
October Term 1996

Hyok S. Lew,
Pro se Petitioner
v.

Rosemount, Inc.

On Petition For Writ Of Certiorari
To The U.S. Court of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Hyok S. Lew
7890 Oak Street
Arvada, CO 80005
Tel.: (303) 420-2784

Pro se Petitioner

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31 pp

The presiding U.S. District Court judge and magistrate took a position totally hostile and prejudicial against the petitioner, who believes that the judge's and magistrate's hostile and prejudiced attitude and position originate from their racial prejudice and hostility directed towards the petitioner, whom the magistrate had openly classified as "not a native born American or English speaking person". The openly racially prejudiced magistrate had fabricated six (6) different false grounds allegedly warranting the dismissal of the lawsuit with prejudice and recommended to the judge to dismiss the lawsuit with prejudice. The judge blindly accepted the magistrate's fallacious recommendation and dismissed the lawsuit with prejudice without reviewing any one of numerous subject matters pertinent to the frauds and misrepresentations committed by the counsels for defendant in providing materials which were used to fabricate the fallacious recommendation of the magistrate. The judge threatened the petitioner that he will order the petitioner to pay the defendant's attorney fees if the petitioner would file any more motions requesting to address the frauds and misrepresentations committed by the counsels for defendant.

Firstly, isn't it unconstitutional to discriminate against the plaintiff because the plaintiff is "not a native born American or English speaking person" in magistrate's opinion; to dismiss the lawsuit with prejudice solely on the fabricated fallacious ground; and to infringe the plaintiff's right to speak out on matters of the lawsuit by intimidation put up by the judge?

Secondly, isn't it injustice that the U.S. Court of Appeals upheld the dismissal of the lawsuit by the U.S. District Court's judge and magistrate without **OPINION**, in spite of the overwhelming evidence supporting the judge's and magistrate's grossly inequitable and discriminating treatment of the petitioner and their unjust acts solely based on the frauds and misrepresentations?

PARTIES TO PROCEEDING

Civil Action No. 95-B-200 in the U.S. District Court for the District of Colorado.

Appeal Docket No. 97-1030 in the U.S. Court of Appeals for the Federal Circuit.

Hyok S. Lew
Plaintiff-Appellant,

v.

Rosemount, Inc.,
Defendant-Appellee.

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The Plaintiff

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The Counsels for Defendant

TABLE OF CONTENTS

Questions presented for Review ---------- i

Parties to Proceeding ---------- ii

Table of Contents ---------- iii

Table of Authorities ---------- iv

Opinion and Jurisdiction ---------- 1

Text of Petition

I. Events pertinent to Petition ---------- 2
II. Issues pertinent to Petition ---------- 6
III. Conclusion of Petition ---------- 9

APPENDIX

A. Defendant's pleading inadvertantly admitting Falsification of Verbal Discovery Order in the process of entering thereof------- A1
B. Plaintiff's Motion requesting the Court to address the Falsification of the Verbal Discovery Order by the defense counsel ----- A3
C. U.S. District Judge's Order regarding the Falsification of the Verbal Discovery Order by the defense counsel ---------- A6
D. Defendant's Pleading affirming Racially Prejudiced Statement made by the Magistrate of the U.S. District Court ---------- A7
E. U.S. District Judge's Order dismissing the lawsuit based on Fabricated Fallacious Ground ---------- A10
F. U.S. District Judge's Order denying Plaintiff's Motion for New Trial ---------- A13
G. Judgment of Affirmance without Opinion by the U.S. Court of Appeals ---------- A14

TABLE OF AUTHORITIES

First Authority: Just Verdict cannot be based on the fabricated fallacious ground totally void of any factual basis and is corroborated to be false and fraudulent overwhelmingly by the documented evidence. The dismissal of the lawsuit with prejudice ordered by the U.S. district judge is an unjust verdict issued solely based on the fabricated fallacious ground, of which fallacy and duplicity are overwhelmingly supported by numerous documented evidences presented by the petitioner before the U.S. District Court and before the U.S. Court of Appeals for the Federal Circuit.

Second Authority: Just verdict cannot be issued by the extremely hostile and prejudiced U.S. district judge, who supported and accepted the false and duplicitous opinions and recommendations from the racially prejudiced magistrate of the U.S. District Court, who identified the petitioner as "not a native born American or English speaking person". The dismissal of lawsuit is manifested by the vindictive and racially prejudiced state of minds of the district judge and magistrate of the U.S. District Court.

Third Authority: The Judgment of Affirmance without Opinion by the U.S. Court of Appeals for the Federal Circuit seems to have ignored and disregarded the overwhelming documented evidences presented therebefore by the petitioner. A fair and just review of the dismissal of lawsuit with prejudice by the U.S. District Court is not possible, when the documented evidences corroborating the fallacy and duplicity of the grounds relied on the U.S. District Court in dismissing the lawsuit with prejudice had been ignored and disregarded by the U.S. Court of Appeals for the Federal Circuit in affirming the U.S. district judge's ruling without OPINION.

Your petitioner Hyok S. Lew respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit in this case.

OPINION OF THE U.S. COURT OF APPEALS

The U.S. Court of Appeals for the Federal Circuit did not issue any opinion in affirming the dismissal of lawsuit with prejudice, as the U.S. Court of Appeals for the Federal Circuit's verdict was Judgment of Affirmance Without Opinion.

JURISDICTION

The judgment of affirmance without opinion of the U.S. Court of Appeals for the Federal Circuit was entered on February 10, 1997.

TEXT OF PETITION

I. Events pertinent to Petition:

This petition is related to a civil action of patent infringement wherein the petitioner is the plaintiff, who had filed a complaint against the defendant for infringing a U.S. patent owned by the petitioner in the U.S. District Court for the District of Colorado. During the settlement-status conference, the magistrate of the U.S. District Court issued a certain discovery order verbally without installing any means for recording the statements made by the magistrate and the parties attending the settlement-status conference. In the subsequent process of entering the magistrate's verbal discovery order, the counsels for defendant falsified the context of the verbal discovery order in the manner that provides unjustified advantage to the defendant. The defense counsel inadvertantly admitted the falsification of the magistrate's verbal discovery order in the process of entering thereof in a defendant's pleading after initially denying the falsification repeatedly (ref. To Appendix A showing the lame excuse put up by the counsels for defendant).

The petitioner's ex-counsel filed a plaintiff's motion requesting the court to address the matter of falsification of the magistrate's verbal discovery order by the defense counsel and to hold a hearing to file a fraud or criminal charge against the defense counsel of the falsification of the verbal discovery order (ref. to Appendix B). Soon thereafter, the petitioner's counsel resigned voluntarily, and the petitioner was forced to prosecute the lawsuit as the pro se plaintiff. The U.S. district judge's ruling on the above-mentioned plaintiff's motion was a duplicitous legal maneuver, wherein he upheld the falsified version of the magistrate's verbal discovery order while holding the addressing of the issue of the falsification of the magistrate's verbal discovery order and the granting of the hearing to file the fraud or criminal charge against the defense counsel in "abeyance" indefinitely (ref. to

Appendix C). The defense counsel's argument that the magistrate has the discretionary authority or power to sign and enter the falsified version of his verbal discovery order falsified by the defense counsel, amounts to nothing more than a lame excuse to justify the defense counsel's fraudulent or criminal act of falsifying the magistrate's verbal discovery order, for it was the defense counsel rather than the magistrate, who had altered the context of the verbal discovery order in the process of entering thereof, and it is an ultimately unethical act even for the magistrate to sign and enter the falsified verbal discovery order of his own. It is an absolutely unjust and erroneous ruling that the U.S. district judge upheld the falsified discovery order under the guise that the issue of falsification of the discovery order will be addressed at another time, which ruling is comparable to sentencing first and have trial later. The U.S. district judge had never addressed the issue of falsification of the discovery order for the next eight (8) months until he dismissed the lawsuit with prejudice based solely on six (6) different fallacious grounds fabricated by the magistrate of the U.S. District Court.

In the afore-mentioned plaintiff's motion requesting the court to address the issue of falsification of the discovery order and grant a hearing to file the fraud or criminal charge against the defense counsel, the plaintiff's ex-counsel also raised issue that the magistrate of the U.S. District Court had signed and entered the falsified version of his verbal discovery order with implicit knowledge of the falsification (ref. to Appendix B), which statement of the plaintiff's ex-counsel implied that the magistrate had at least condoned or more likely aided and abetted the falsification of the discovery order by the defense counsel. Apparently, the judge and the magistrate of the U.S. District Court were incensed, because the plaintiff had raised issues which were considered by them as a direct challenge to the authority of the U.S. District Court and an insult to the district judge and the magistrate, particularly in view that

such challenge and accusations were made by the plaintiff, who is "not a native born American or English speaking person" according to the magistrate's classification of the plaintiff, against the very proud class of American citizens, i.e., the judicial officers and the practicing lawyers.

The magistrate of the U.S. District Court expressed his anger by accusing the plaintiff in an openly racial tune:

> "Dr. Lew, I think that you are making serious, serious mistake by trying to do this yourself. You are not a native born American or English speaking person, and do not understand English well enough to really understand what is going on. Your speaking of English is not so good that people can understand one hundred percent what you say. You try to do this case without lawyers, without experts and without the ability to have some body communicating for you. I think it is terribly, terribly foolish decision on your part."

On the first impression, the above-described statement of the magistrate of the U.S. District Court sounds like a constructive advice or suggestion to the plaintiff. But the tune of the statement including the offensive phrases such as "serious, serious mistake"; "not a native born American or English speaking person"; and "terribly, terribly foolish decision" clearly indicates that the statement is an accusation and racial put-down made by the magistrate in order to vent his anger. As a matter of fact, it is hard to believe that if any respectable judicial officer or officers would actually make such racially prejudicial statement accusing and racially putting-down the plaintiff in front of the entire troupe of the defense counsel. The defendant's pleading filed with the U.S. Court of Appeals for the Federal Circuit, that is attached as Appendix D, affirms that the magistrate had actually made the racially prejudicial statement (ref. to Appendix D).

It is self-evident from the afore-mentioned attitudes of

the judge and the magistrate of the U.S. District Court, i.e., the district judge's duplicitous ruling of upholding the falsified discovery order rigged by the defense counsel while holding the addressing of the issue of the falsification of the discovery order in abeyance indefinitely, and the magistrate's signing and entering of the falsified discovery order with implicit knowledge of the falsification thereof and his accusation in the racially prejudiced tone directed against the plaintiff, that the district judge and the magistrate had lost the neutrality in their mentality and started to treat the plaintiff as their adversary rather than one of the two equal parties in the lawsuit.

The plaintiff filed a motion requesting to vacate the erroneous ruling by the U.S. district judge on the previous plaintiff's motion, in which ruling the district judge had upheld the falsified discovery order while holding addressing of the issue of the falsification of the discovery order in abeyance indefinitely. The district judge had never made any ruling on this motion of the plaintiff. The plaintiff filed a motion requesting the removal of the magistrate on the ground that the magistrate is a close friend of one of the counsels for defendant and had taken hostile and prejudiced position against the plaintiff. The district judge also ignored and avoided to make any ruling on this motion of the plaintiff. As a matter of fact, the U.S. district judge had systematically ignored and willfully avoided to make any rulings on all of the plaintiff's motions filed thereafter numbering at least twenty (20).

The racially prejudiced magistrate of the U.S. District Court, who had accused the plaintiff for "not a native born American or English speaking person", had fabricated six (6) different fallacious grounds allegedly warranting the dismissal of the lawsuit, which fallacious grounds the magistrate had put together solely based on the fraudulent and misrepresenting information supplied by the defense counsel. Apparently, the defense counsel's strategy in the lawsuit was to commit indiscriminate frauds

and misrepresentations in order to take advantage of the plaintiff's inexperience in litigation, and to utilize the magistrate of the U.S. District Court who condones and abets the fraudulent and misrepresenting acts of the defense counsel.

The U.S. district judge had blindly accepted the magistrate's fallacious recommendation and dismissed the lawsuit with prejudice. While the U.S. district judge claimed:

> "My de novo review of the record in this case reflects that the magistrate judge's comprehensive and thorough recommendation is clearly supported by the record.",

the district judge did not actually address any of the improper, unethical, and criminal conducts on the part of defense counsel and the magistrate, which conducts had been corroborated by the documented evidences presented before the U.S. District Court by the plaintiff. In order to prevent the plaintiff from speaking out further on the events pertinent to the proceedings of the lawsuit and on the unsavory matters related to the improper and unethical conducts of the U.S. district judge and the magistrate, and the defense counsel, the U.S. district judge threatened the petitioner:

> "Any further abuse of the judicial process by the plaintiff as has been repeatedly demonstrated throughout the course of this action while appearing pro se shall subject the plaintiff to further sanctions, including but not limited to, additional costs and/or attorney fees incurred as a result, and the entry of an order barring plaintiff from filing any pleadings in a pro se capacity rather than through an attorney of record appearing on his behalf."

(ref. to the last paragraph appearing in Appendix E).

II. Issues under Petition:

1. The petitioner believes that it is unconstitutional

to discriminate and mistreat the plaintiff in the lawsuit by the U.S. district judge and the magistrate to such an extreme degree exemplified by:

(a) the magistrate had condoned and abetted the falsification of the verbal discovery order by the defense counsel in the process of entering thereof, while the magistrate was aware of the falsification of the verbal discovery order in advance prior to the entering thereof;

(b) the district judge covered up the crime of falsifying the verbal discovery order by the defense counsel by upholding the falsified discovery order and holding in abeyance indefinitely the plaintiff's motion requesting the court to address the falsification of the verbal discovery order and holding a hearing to file a criminal charge against the defense counsel of the falsification of the verbal discovery order; and

(c) the magistrate had encouraged the defense counsel to commit frauds and misrepresentations by suggesting that the defense counsel will receive preferential treatment by showing his hostility and prejudiced attitude towards the plaintiff, who called the plaintiff

> "not a native born American or English speaking person (who made) terribly, terribly foolish decision."

2. The petitioner believes that it is unconstitutional to deprive the petitioner of his civil right to receive a fair trial as a tax-paying U.S. citizen, even though he is not a "native born American or English speaking person" according to the magistrate's classification of the plaintiff. The judge and magistrate of the U.S. District Court had infringed the petitioner's civil right entitling him to receive a fair trial by acting unethically and inequitably:

(a) The judge and the magistrate of the U.S. District Court condoned and abetted the frauds and misrepresentations perpetrated in the lawsuit by the defense counsel, and thus helped the defendant to take

illegal advantage and imposed unlawful handicap to the plaintiff: and

(b) The magistrate had fabricated six (6) different fallacious grounds allegedly warranting the dismissal of the lawsuit with prejudice and recommended the dismissal of the lawsuit with prejudice to the district judge. The judge had blindly accepted the magistrate's recommendation and dismissed the lawsuit with prejudice solely based on the fallacious grounds fabricated by the magistrate. In so doing, the judge ignored and disregarded numerous documented evidences corroborating the fallacy and the fraudulent nature of the grounds allegedly warranting the dismissal of the lawsuit with prejudice, which documented evidences were presented before the U.S. district judge by the plaintiff.

3. The petitioner believes that it is unconstitutional to deprive the plaintiff of his civil right to speak out on the events pertinent to matters related to the lawsuit. The U.S. district judge infringed the plaintiff's civil right entitling him to speak out in order to protect his interest in the lawsuit by threatening that the district judge will order the plaintiff to pay the defendant's attorney fees, if the plaintiff speaks out further and again raise the issue of the unethical acts committed by the district judge and the magistrate, and the criminal and fraudulent acts perpetrated by the defense counsel.

4. The petitioner believes that it is unconstitutional to deny the due process to the plaintiff, that the plaintiff entitles as his civil rights. The U.S. district judge had systematically and willfully ignored and refused to make any rulings on all of the plaintiff's motions numbering at least twenty (20), which attitude and act of the district judge made the prosecution of the lawsuit absolutely impossible for the plaintiff.

5. The petitioner believes that he did not receive a fair review of his appeal and did not receive justice from the U.S. Court of Appeals for the Federal Circuit. The plaintiff had presented the issue in a great detail and submitted extensive documented evidences supporting the merits of those issues before the U.S. Court of Appeals for the Federal Circuit. The U.S. Court of Appeals for the Federal Circuit issued Judgment of Affirmance without Opinion. In the petitioner's opinion, there is definite possibility that his case might have been swept under the rug by the preoccupied appellate judges without examining the extensive documented evidences and without reviewing the arguments filed with the U.S. Court of Appeals for the Federal Circuit by the plaintiff.

III. Conclusion of Petition:

The petitioner has devoted the past twenty five years of his life to inventing, and obtained two hundred twenty five U.S. patents. In the early years of his inventive career, the petitioner had a youthful ideal of contributing to the well being of all human kinds by inventing things which make lives of many unprivileged people less burdening and toiling. Such youthful ideal has long gone and the petitioner keeps inventing to support his family and stay alive for himself. It has been a sheer up hill struggle for the petitioner, who had to do everything required to invent and obtain patents all by himself from writing patent applications to drafting patent drawings. Through many challenges and repeating disappointments in life, the petitioner has learned a long time ago that this world is not a very nice place to live for many under-privileged folks including the petitioner. It was the last things which the petitioner expected that certain practicing lawyers do not hesitate to commit crime to win a lawsuit by means of fraud and misrepresentation, and certain judge and magistrate dismiss a lawsuit with prejudice solely based on fallacious grounds.

The petitioner hereby petitions the United States Supreme Court to review the five issues presented in the foregoing Issues under Petition. The petitioner prays that the United States Supreme Court grants review of this case.

Date: April 28, 1997 Respectfully submitted,

By: Hyok Sang Lew

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Pro se Petitioner

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-B-200

HYOK S. LEW
An individual,
Plaintiff,

v.

ROSEMOUNT, INC.,
A Minnesota corporation,
Defendant.

ROSEMOUNT, INC.'S MEMORANDUM IN OPPOSITION TO LEW'S PETITION ASKING THE WITHDRAWAL OF MAGISTRATE JUDGE

Lew's petition seeking the withdrawal of Magistrate Judge O. Edward Schlatter is baseless. The orders entered by Magistrate Judge Schlatter and complained of by Lew are well within the scope of his discretion and Lew has not shown them to be clearly erroneous or contrary to law. Rule 72(a), F.R.C.P.**

Lew's assertion that Magistrate Judge Schlatter has "adopt(ed) an inappropriately friendly relationship with the defense counsels --------- (and) has taken an openly hostile and prejudiced attitude towards the Plaintiff Lew" (Lew Petition, p. 1) is without any foundation. In the same vein, Lew's indictment of Magistrate Judge Schlatter as aiding and abetting criminal activities (Lew Petition, p. 2) is a scandalous charge without any justification.

Rosemount is mindful that Lew now appears pro se and that much of his difficulty (and consequently his wild

charges) most likely stem from Lew's lack of understanding of the judicial process. It is only for these reasons that Rosemount has not sought sanctions. Nevertheless, Lew's attack on the Magistrate Judge is wholly unwarranted and inappropriate.

Lew's petition should be denied.

Dated: November 30, 1995

Respectfully submitted,

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-B-200

HYOK S. LEW
An individual,
Plaintiff,

v.

ROSEMOUNT, INC.,
A Minnesota corporation,
Defendant.

LEW'S MOTION TO RECONSIDER MAGISTRATE'S ORDER OF JULY 24, 1995 AND THE PROTECTIVE ORDER ENTERED ON JULY 24, 1995, AND LEW'S MOTION FOR HOLDING HEARING TO FILE CHARGE AGAINST DEFENDANT'S COUNSEL OR COUNSELS OF FALSIFYING CONTENTS OF ORDER MADE BY MAGISTRATE JUDGE ON JULY 11, 1995 AND TO ARGUE THE ENTRY OF THE PROTECTIVE ORDER

Pursuant to Rule 72(a), Fed.R.Civ.P., Plaintiff Lew objects certain portions of the Magistrate 's order of July 24, 1995. First, Plaintiff raises several objections to discovery related issues. Essentially, the Magistrate signed an order drafted by Defendant's counsel which, although was supposed to reflect the ruling made by the Magistrate on July 11, 1995, in actuality misrepresents the Magistrate's ruling and places significant discovery burdens on Lew since he is now by Order required to produce highly proprietary information which has no bearing on this lawsuit.

In the process of executing the Defendant's draft order, the Magistrate failed to follow Rule 11. Dr. Lew submitted a pleading pro se, which was not signed by counsel, objecting to the proposed order drafted by Defendant's counsel. *1 Rule 11 appear to place a burden on the Court to notify the party of failure to place an attorney's signature on a pleading: "An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Instead of notifying Plaintiff or Plaintiff's counsel directly, the Magistrate informed Defendant's counsel ex parte of his intention to strike the pleading and never informed plaintiff or plaintiff's counsel until he signed Defendant's draft order. Because he struck Lew's pleading without giving him a chance to submit a pleading with counsel's signature, the Magistrate was without the benefit of Lew's argument when he entered the Order.

In addition, the Magistrate failed to follow the Federal Rules and decide discovery issues raised impromptu by Defendant's counsel during a Settlement Conference. By deciding discovery issues extemporaneously, counsel did not have the opportunity to consult pursuant to Rule 37(a)(2)(B) and motion to compel was not filed pursuant to Rule 37. The failure to adhere to these lack of a crystallized presentation to the Magistrate of the controverted discovery issues are an injustice to Dr. Lew.

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*1 The pleading, which has been attached as Exhibit A, accuses Defendant's counsel of willfully falsifying the Magistrate's oral rulings which Lew himself believes is tantamount to felonious conduct. The exhibits to that pleading are incorporated herein by reference. Despite having received notice of this conduct, the Magistrate signed Defendant's draft order with implicit knowledge of the inaccuracies.

I. OBJECTION TO THE DISCOVERY ORDER

The following sets forth Dr. Lew's objections to the discovery order. This material was drafted by Dr. Lew himself. Much of the following was contained in the stricken pleading drafted by Lew.

Plaintiff Hyok S. Lew ("Lew") is hereby objecting to the Magistrate's Order of July 24, 1995 which purports to confirm rulings made by the Magistrate Judge on July 11, 1995; Lew is hereby accusing Defendant's counsel or counsels for willfully falsifying the Order made by the Magistrate Judge on July 11, 1995; and Lew is hereby filing a motion to move the Court to hold a hearing whereby Lew files charges against Defendant's counsel or counsels of willfully falsifying the Order made by the Magistrate Judge on July 11, 1995.

DATED: July 28, 1995

Respectfully submitted,

SHERIDAN ROSS & McINTOSH, P. C.

By: /s/ George G. Matava
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Attorney for Plaintiff

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 95-B-200

HYOK S. LEW, an individual,
Plaintiff,

v.

ROSEMOUNT, INC., a Minnesota corporation,
Defendant

ORDER

This case is before me on plaintiff's motion for clarification of my order of August 15, 1995, reviewing certain determinations by the magistrate judge. Being duly advised, IT IS ORDERED that the motion is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the order of August 15, 1995, finding the magistrate judge's determinations to be neither clearly erroneous nor contrary to law applies to the magistrate judge's nondispositive discovery rulings.

IT IS FURTHER ORDERED that the August 15, 1995 order does not address plaintiff's various charges against counsels appearing in this case concerning falsification of documents or violation of attorney/client privilege, which matters are held in abeyance.

BY THE COURT:

DATED: August 21, 1995 /s/ Lewis T. Babcock
Lewis T. Babcock, Judge

APPENDIX D

BRIEF FOR DEFENDANT-APPELLEE
ROSEMOUNT, INC.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Appeal No. 97-1030

HYOK S. LEW
Plaintiff-Appellant,

v.

ROSEMOUNT, INC.,
Defendant-Appellee.

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO IN 96-1223 & 96-1257 ENTERED APRIL 18, 1996 JUDGE LEWIS T. BABCOCK

December 16, 1996

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When the Magistrate Judge's advice is read in context, it is plain that the Magistrate Judge was trying to help, not harm, appellant (A268):

> "Dr. Lew, I think that you are making a serious, serious mistake by trying to do this yourself. You are not a native born American or English speaking person and you do not understand the law in America. You do not understand English well enough to really understand what is going on. Your speaking in English is not so good that people can understand one hundred percent what you say. You try to do this case without lawyers, without experts and without the ability to have somebody communicating for you. I think it is a terribly, terribly foolish decision on your part. You don't understand the nature of the way legal proceedings work and it is hurting you and your case. I urge you to get a lawyer and I urge you to listen to the lawyer because the lawyer will tell you that you need to have expert witness in order to do, really, a case like this"

Respectfully submitted,

Date: December 16, 1996

/s/ Jesse J. Jenner

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 95-B-200

HYOK S. LEW, an individual,
Plaintiff,

v.

ROSEMOUNT, INC., a Minnesota corporation,
Defendant.

ORDER

This case is before me upon the following: (1) Magistrate Judge O. Edward Schlatter's March 11, 1996 recommendation that this action be dismissed with prejudice; (2) defendant's motion to dismiss upon basis stated by the magistrate judge in his recommendation; (3) plaintiff's objection to the magistrate judge's recommendation; (4) "Plaintiff's Response Objecting to Rosemount, Inc.'s Motion To Dismiss, Plaintiff's Motion Requesting Voluntary Withdrawal of Magistrate O. Edward Schlatter From The Lawsuit, And Plaintiff's Motion To Sanction Defendant For Harassing Plaintiff By Means Of Criminal Acts"; (5) Defendant's opposition to motion to stay the order of March 1, 1996 and motion to strike; and (6) "Plaintiff's Objection To Rosemount's Motion To Strike Lew's Motion To Stay The Order Of March 1, 1996 And Plaintiff's Motion To Have Hearing And To Report Crimes Committed By Defendant And Its Counsels To The Criminal Division Of U.S. Attorney's Office And The Office of FBI."

The magistrate judge has recommended dismissal of this action for plaintiff's refusal to cooperate in discovery. He cites as examples, plaintiff's refusal to appear at his deposition, plaintiff's refusal to agree to an English translation of a prior art Japanese patent, the content of which contains all the revisions that plaintiff previously requested, plaintiff's obstruction of service of subpoena upon a third party, and continued inclusion of scandalous and impertinent matter in papers filed with the court despite explicit warnings that plaintiff refrain from such conduct. The magistrate judge found in his recommendation that plaintiff's conduct caused to suffer unnecessary expense, delay and constituted abuse beyond the limits any litigant should be expected to bear.

I have reviewed the magistrate judge's recommendation do novo. My de novo review of the record in this case reflects that the magistrate judge's comprehensive and thorough recommendation is clearly supported by the record. Indeed, the prolix pleadings filed by the plaintiff following the issuance of the magistrate judge's recommendation are replete with continued scandalous and impertinent matter wholly beyond the bounds of any reasonable judicial tolerance. I conclude from my review of the record that plaintiff's continuous obstreperous and impertinent conduct constitutes unconscionable abuse of the judicial process which requires no less than the sanction of dismissal of this action with prejudice. I further conclude that plaintiff's allegations of improper, unethical, and criminal conduct on the part of defense counsel and the magistrate judge are baseless. Accordingly,

IT IS ORDERED that the recommendation of the magistrate judge is approved, defendant's motion to dismiss is GRANTED, and the above action is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that "plaintiff's Objection to Rosemount's Motion To Strike Lew's Motion To Stay The Order Of March 1, 1996 And Plaintiff's Motion To Have Hearing And To Report Crimes Committed By Defendant

And Its Counsels To The Criminal Division Of U.S. Attorney's Office And The Office of FBI" is stricken as scandalous and impertinent.

IT IS FURTHER ORDERED that plaintiff's motion for withdrawal of the magistrate judge is DENIED.

IT IS FURTHER ORDERED that the remaining pending motions are DENIED as moot.

IT IS FURTHER ORDERED that the defendant shall have its cost in this action.

IT IS FURTHER ORDERED that any further abuse of the judicial process by the plaintiff as has been repeatedly demonstrated throughout the course of this action while appearing pro se shall subject the plaintiff to further sanctions, including but not limited to, additional costs and/or attorney fees incurred as result, and the entry of an order barring plaintiff from filing any pleadings in a pro se capacity rather than through an attorney of record appearing on his behalf.

BY THE COURT:

DATED: April 17, 1996

/s/ Lewis T. Babcock
Lewis T. Babcock, Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 95-B-200

HYOK S. LEW, an individual,
Plaintiff,

v.

ROSEMOUNT, INC., a Minnesota corporation,
Defendant.

ORDER

Upon "Plaintiff's Motion To Have New Trial On The Ground That The Lawsuit Dismissed With Prejudice By The April 17, 1996 Order of Judge Lewis T. Babcock Had Erroneous Ruling Made By The Judge, Racially Prejudiced Statement Made By The Magistrate, And Fraud And Misrepresentation By Defense Counsel".

IT IS ORDERED that the motion for new trial is DENIED.

BY THE COURT:

Dated: May 2, 1996

/s/ Lewis T. Babcock
Lewis T. Babcock, Judge

APPENDIX G

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

97-1030

HYOK S. LEW
Plaintiff-Appellant,

v.

ROSEMOUNT, INC.,
Defendant-Appellee.

Judgment

ON APPEAL from the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

In CASE NO(S). 96-1223 & 96-1257

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

Per Curiam: (MAYER, PLAGER, and RADER, Circuit Judges):

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED FEB 10 1997

/s/ Jan Horbaly
Jan Horbaly, Clerk

NOTICE TO PRO SE APPELLANTS AND PETITIONERS

The court has acted on your appeal or petition for review. The relief you sought from the court was denied. The accompanying judgment disposes of your appeal. It is a judgment of affirmance without opinion entered under Federal Circuit Rule 36, which states:

Rule 36. Entry of Judgment

Judgment of affirmance without opinion.-- The court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following circumstances exist:

(a) the judgment, decision or order of the trial court appealed from is based on findings that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) summary judgment, direct verdict, or judgment on the pleading is supported by the record;

(d) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or

(e) a judgment or decision has been entered without an error of law;

and an opinion would have no precedential value.

Consequently, no opinion of the court was filed in this appeal by the panel of judges that decided the appeal. Inquiries to the court seeking further explanation of the court's decision cannot be honored as the deliberations of the panels of the court in particular appeals are not recorded.

This is a final judgment of the court. No further judicial review is available as a matter of right. The Supreme Court of the United States may review the judgments of this court by granting a petition for writ of certiorari; however, a review on writ of certiorari is not a matter of right, but of judicial discretion, only when there are special and important reasons therefor.